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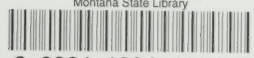


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THE INTERIM

DECEMBER 1995 HELENA, MONTANA VOL. X NO. 7

SHIELDS
PERIODICALS

JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION

Commission to Meet in Billings...The Juvenile Justice and Mental Health Study Commission will meet on December 7 and 8 in Billings. At Noon on Thursday, the Commission will meet at the Youth Services Center to hear Randy Bellingham of the Youth Justice Advisory Council and to tour the Youth Services Center and Yellowstone Treatment Center.

On Thursday evening, the Commission will hold a public hearing in the board room of the Lincoln Center (School District #2 Administrative Offices). The hearing will begin at 7 p.m.

On Friday, the meeting will begin at 8 a.m. at the Youth Services Center. Invited providers will present testimony, and the Commission will review its findings to date. The Subcommittees will also continue their work.

The Billings meeting constitutes the third mental health region in which the Commission will have met. The Commission plans to meet in Helena on February 5 and 6 and will hold meetings in Missoula and Great Falls in the future.

PLEASE RETURN

SUBCOMMITTEE ON VETERANS' NEEDS

Subcommittee to Hold First Meeting...The Subcommittee on Veterans' Needs will hold its first meeting on Thursday, December 14 in Room 104 of the Capitol Building, beginning at 9:30 a.m. This is a change from the previously announced date of December 15. There has been a substitution on the membership of the Subcommittee. Senator Jim Burnett has replaced Senator Mack Cole.

The Subcommittee will hear from representatives of the Veterans' Affairs Division and the state agency administering the Eastern Montana Veterans' Home. The Subcommittee will also hear about the Veterans' Administration and health care reform.

The Subcommittee will receive an update on last session's legislative successes and take testimony from interested persons who have issues they would like the Subcommittee to consider for this interim, including educational benefits and employment preference.

For further information about the Subcommittee or to be placed on the interested persons' list, please contact Susan Fox at the Legislative Services Division in Helena, (406)444-3064.

COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS

Committee Holds First Meeting...The Committee on Public Employee Retirement Systems (CPERS), a statutory, bipartisan, 8-member legislative committee established to oversee public employee retirement issues and to review retirement legislation prior to the 1997 Legislative Session, conducted its first meeting on November 17 at the Capitol building.

During this organizational meeting, the Committee elected officers; reviewed activities of the two previous Committees on Public Employee Retirement Systems; reviewed 1995 retirement legislation; were introduced to system administrators and public employee and retiree organizations; and discussed the Committee's study plan.

The Committee elected Senator Sue Bartlett as Chairperson and Representative Bill Wiseman as Vice-Chairperson.

Committee Hears About Retirement Systems...The Public Employees' Retirement Board (PERB) was represented by Ms. Linda King, administrator of the Public Employees' Retirement Division. Ms. King listed for CPERS

the eight statewide retirement systems administered by the PERB. These eight systems include the:

- Public Employees' Retirement System;
- Judges' Retirement System;
- Highway Patrol Officers' Retirement System;
- Sheriffs' Retirement System;
- Game Wardens' Retirement System;
- Municipal Police Officers' Retirement System;
- Firefighters' Unified Retirement System; and
- Volunteer Firefighters' Compensation Act.

Ms. King explained the PERB's fiduciary responsibilities and reviewed the new constitutional provision (Montana Constitution, Article VIII, Section 15), which requires that all public employee retirement systems be actuarially funded. This provision became effective January 1, 1995.

Additionally, Ms. King summarized at least three issues likely to result in PERB-proposed legislation for 1997. First is a guaranteed annual benefit adjustment (GABA) similar to HB 268, which failed to pass the 1995 Legislature. Second is funding for the Judges' Retirement System, which is actuarially unsound because of consistent shortfalls in the district court fees contributed to the system. Ms. King also suggested that a third issue is actuarial funding of certain benefits that are promised but not currently actuarially funded, such as the supplemental benefits paid from the Municipal Police Officers' Retirement System pension trust fund.

Mr. David Senn, executive director of the Teachers' Retirement System (TRS), summarized the Teachers' Retirement Board's responsibilities and membership, as well as the basic features of TRS. Mr. Senn reported that the Teachers' Retirement Board remains interested in supporting a GABA for system members similar to the GABA provided in HB 268. Another issue that may require legislation is clarification of "average final compensation" and "earned compensation" definitions, which were revised by HB 205 last session.

Mr. Dave Evenson, administrator of the University System's Optional Retirement Plan (ORP) which is under the auspices of the Board of Regents, was unable to attend the CPERS meeting but did provide written testimony. Mr. Evenson's testimony explained that TRS and the ORP were engaged in studying the experience of the ORP and determining the sufficiency of a 2.502% University System contribution toward the TRS unfunded liability. Although the Teachers' Retirement Board has the authority to administratively adjust the amount of this contribution, Mr. Evenson's testimony indicated that he will be keeping CPERS apprised of the outcome of the studies and any potential legislation to affect the ORP.

Committee Hears From Employee and Retiree Groups... Following the presentations by the system administrators, each public employee and

retiree group in attendance introduced itself. Some groups summarized their primary concerns.

The Public Employee Pension Security Coalition (PEPSCO), represented by PEPSCO President Tom Schneider, testified that the primary issue for PEPSCO will be a GABA. As representative for the Montana Public Employees Association, Mr. Schneider also indicated that there may be a few additional issues brought to CPERS from non-PEPSCO members.

Each of the groups presenting testimony indicated that their primary issue would be providing a prefunded GABA for public retirees.

Two specific proposals to amend retirement laws were presented at the meeting. Mr. Bill Steele, representing the Montana Retired Police Officers' Association, submitted a retirement proposal similar to the Association's 1995 proposal to amend the existing postretirement benefit adjustment for covered police officers. Under current statute, a retired police officer receives a minimum benefit of one-half the salary of a newly confirmed patrol officer. However, because many officers retire at the rank of sergeant or above, a retiree must wait 11 years to 16 years to receive any increase in benefits. Mr. Steele's proposal is to amend the adjustment so that benefits for members who retire at the rank of sergeant or above are based on one-half the salary of a newly confirmed sergeant rather than the lower salary of a newly confirmed patrol officer.

Mr. Dave Galt, administrator of the Motor Carrier Services Division, presented a proposal to move 92 motor carrier employees who are sworn peace officers into the Sheriff's Retirement System or a similar law enforcement retirement system. Mr. Galt testified that he believed that the benefits provided in the law enforcement retirement systems better meet the needs of these 92 employees.

State Budget Director Suggests Study Topic... Finally, CPERS heard testimony from State Budget Director Dave Lewis expressing interest in examining options for public employees to belong to defined contribution plans where there would be more portability of benefits than offered in the current defined benefit plans. Mr. Lewis explained that he believes that the future state government workforce will no longer be oriented toward a 30-year career but will consist more of groups of employees who will contract with government to carry out specific functions or tasks. A major obstacle to privatization and creating a more flexible bureaucratic organization, Mr. Lewis said, is that public employees lose their retirement benefits. He said he would like to see greater opportunities for government employees to participate in defined contribution plans where their retirement wouldn't depend on state-run, 30-year defined benefit plans.

Subcommittee Adopts Work Schedule... Following these presentations, CPERS members discussed their study plan and work schedule and agreed to the following tentative meeting dates and major agenda items:

Meeting #2 - February 23, 1995: The Committee will examine the fiscal reports and benefit structures of each of the retirement plans and discuss guiding principles for retirement policy.

Meeting #3 - June 7, 1995: The Committee will conduct a public hearing for the formal presentation of proposed legislative changes for the 1997 Legislative Session.

Meeting #4 - August 15, 1995: The Committee will examine and discuss staff analysis of each of the submitted proposals and take preliminary action on recommendations to the 1997 Legislature regarding whether a proposal should be passed or not.

Meeting #5 - To be determined: The Committee discussed the intent that this meeting be used for the final review of proposals and any required adjustments. The meeting will not be conducted until the retirement systems are able to complete their final valuations, which will likely be in mid-October. Also of concern to Committee members was giving newly-elected legislators an opportunity to present their retirement proposals to the Committee prior to or during the 1997 Session.

For further information on CPERS or to be placed on the interested persons' list, please contact Sheri Heffelfinger at the Legislative Services Division in Helena, (406)444-3064.

LEGISLATIVE AUDIT COMMITTEE

Committee Meets in November...The Legislative Audit Committee met November 17 in Room 104 of the Capitol Building. The following reports were presented:

FINANCIAL-COMPLIANCE AUDITS:

Board of Regents and Commissioner of Higher Education (95-17)

A financial-compliance audit of the Board of Regents and Commissioner of Higher Education was performed for the two fiscal years ending June 30, 1995. The report contains five recommendations that relate to improving investment earnings, recovering indirect costs of federal grants, maintaining state vocational education expenses, and complying with laws related to building fees and the METNET computer network. An unqualified opinion was issued on the financial schedules contained in the audit report, which

indicates the reader can rely on the information contained in the schedules.

Guaranteed Student Loan Program, Commissioner of Higher Education (95-6)

A financial-compliance audit of the Montana Guaranteed Student Loan Program was performed for the year ending June 30, 1995. The report contains no recommendations and an unqualified opinion on the financial statements.

Montana Council on Vocational Education (95-21)

A financial-compliance audit of the Montana Council on Vocational Education was performed for the two fiscal years ending June 30, 1995. The report contains no recommendations and an unqualified opinion on the financial schedules.

Montana State Library Commission (95-20)

A financial-compliance audit of the Montana State Library Commission was performed for the two fiscal years ending June 30, 1995. The report contains an unqualified opinion and no recommendations.

Montana Arts Council (95-22)

A financial-compliance audit of the Montana Arts Council was performed for the two fiscal years ending June 30, 1995. The report contains no recommendations and an unqualified opinion on the financial schedules.

Department of Livestock (95-19)

A financial-compliance audit of the Department of Livestock was performed for the two fiscal years ending June 30, 1995. The report contains four recommendations that relate to controls over cash and to Board of Livestock travel expenditures. An unqualified opinion was issued on the financial schedules contained in the audit report.

Department of Agriculture (95-18)

A financial-compliance audit of the Department of Agriculture was performed for the two fiscal years ending June 30, 1995. The report contains five recommendations for improvement in department operations. These recommendations relate to the proper recording of transactions on the state's accounting system and compliance with state law regarding produce dealer assessment fees and the Montana Growth Through Agriculture Act. An unqualified opinion was issued on the financial schedules contained in the audit report.

FINANCIAL AUDITS:

Montana Board of Housing, Department of Commerce (95-29)

A financial audit of the Montana Board of Housing was performed for the year ending June 30, 1995. The report contains no recommendations. An unqualified opinion was issued on the financial statements of the Montana Board of Housing.

Board of Investments, Department of Commerce (95-3)

A financial audit of the Montana Board of Investments was performed for the year ending June 30, 1995. The report contains no recommendations. An unqualified opinion was issued on the financial statements of the All Other Funds portfolio, the Retirement Fund Bond Pool, the Montana Common Stock Pool, the Short-Term Investment Pool, the Montana Convertible Bond Pool, and the Enterprise Fund.

PERFORMANCE AUDITS:

Relocating Utilities on Montana's Highway Right-of-Way, Department of Transportation (94P-31)

This performance audit evaluated the contract administration process used by the Montana Department of Transportation (MDT) to monitor utility relocation work. Utility relocation involves the relocation, replacement, or adjustment of utility facilities that fall into the path of a highway improvement project. MDT is responsible for overseeing and paying for the relocation of utility company facilities that interfere with highway work. Although most states allow utilities to occupy state right-of-way, most states have the authority to require utilities to move facilities from highway right-of-way at the company's expense. The auditors examined MDT's internal controls over the utility relocation process to determine if improvements are needed. This included a review of controls for assuring compliance with federal requirements. It was determined that MDT could improve internal controls over the utility relocation process by better defining responsibilities of involved work units, by compiling management information, and by prioritizing field inspections and in-house audits of final project costs. Several recommendations were made to improve MDT compliance with federal and state regulations and department policy.

Big Game Drawing System, Department of Fish, Wildlife and Parks (94P-46)

This performance audit presented information on the Big Game Drawing System. The report concluded that the computerized Big Game Drawing System for moose, sheep, goat, deer, elk, and antelope special licenses and permits is fair and random. The system

ensures applicants have a unique drawing number and an equal chance of selection for a permit or license within a district. Program operations could be improved in several areas: compliance procedures, program administration, and general and application controls.

PERFORMANCE AUDIT FOLLOW-UP:

Department of Natural Resources and Conservation, Management of Forested Trust Land, Fire Management Program, and Forestry Equipment Program (95SP-76)

This performance audit report was a follow-up to three previously issued reports to the Department of State Lands, now the Department of Natural Resources and Conservation. The reports addressed management of forested trust land, policies and procedures pertaining to forest fire management, and management of forestry vehicles. The audits contained 14 recommendations. Five recommendations were implemented; two were being implemented; two were partially implemented; and five were not implemented. Four of the five recommendations not implemented resulted from staff turnover.

ELECTRONIC DATA PROCESSING AUDIT:

Information Processing Facility and Central Applications (95DP-33)

Auditors completed the annual electronic data processing audit of the state's centralized data processing systems. The audit included tests of centralized controls over the state's mainframe computer and three computer-based applications: State Payroll, Warrant Writer, and the Statewide Budgeting and Accounting System (SBAS). The general control environment provides for controlled application processing on the mainframe computer system. Audit recommendations for improving general controls address physical security over operating system documentation and electronic data inventory.

An application review was performed of SBAS, State Payroll, and Warrant Writer. Input, processing, and output controls over the applications were effective, as well as adequate, to ensure data integrity during processing phases for fiscal year 1994-95.

CONTRACT AUDITS:

Montana State Lottery, Financial Statements (95C-01)

Olness & Associates, P.C., Certified Public Accountants, conducted a financial-compliance audit of the Montana State Lottery Financial

Statements for the years ending June 30, 1995 and 1994. The report contains no audit recommendations.

Montana State Lottery, Report on Montana Cash Drawings (95C-02)
Anderson ZurMuehlen & Co., P.C., Certified Public Accountants, presented a report on the Montana Cash Drawings of the Montana State Lottery for the year ending June 30, 1995. The report contains no recommendations.

Other Business... The next meeting of the Legislative Audit Committee is scheduled for December 15, 1995.

LEGISLATIVE SERVICES DIVISION

LEGAL DIVISION

Ballot measures received:

- Increase Minimum Wage (MontCEL)
- Revise Property Tax (Cut Now)
- People's Grand Jury (People's Grand Jury)
- Grand Jury by Petition (Montanans for Due Process)
- Right to Travel (Montanans for Due Process)
- Revise Qualifications for Judges (Montanans for Due Process)
- Revise Right to Know (Montanans for Due Process)
- Right to Work (Montanans for Due Process)
- Right to Have and Raise Children (Montanans for Due Process)
- Revise Parking Near Intersection (Birkholz)

Note: pursuant to 13-27-202(2), MCA, copies of correspondence regarding the proposed ballot measures are available through the Secretary of State, (406)444-2034.

COMMITTEE ON INDIAN AFFAIRS

Committee Travels to Crow Reservation...On November 7 and 8, the Committee on Indian Affairs traveled to Crow Agency to tour the Crow Reservation and to meet with the Crow Tribe. On Tuesday afternoon, the Committee toured the tribal offices, Little Big Horn College, the new Indian Health Service hospital, and the Little Big Horn Casino. The Committee also heard about the tribal homeless shelter and the drug detoxification center.

Committee Holds Education Hearing...On Tuesday evening, the Committee held a public hearing on Indian education. Speakers from the Crow and Northern Cheyenne tribal education departments, public school districts on the Crow Reservation, school board members, parents, and students provided the Committee with a unique perspective on education from an Indian viewpoint. Speakers stressed the need to have more Indian culture and language classes in the public schools and the need for more Indian teachers. Speakers also expressed concern about federal plans to block grant certain education funds to the states and the need to ensure that those funds are passed through to tribal governments. Concern was also expressed by public school officials about proposed cuts in impact aid funding that would have a detrimental effect on their districts' budgets.

Committee Hears from Tribal Officials...On Wednesday, following a Crow welcoming ceremony, the Committee heard from tribal officials on a variety of topics. Denis Adams, Tribal Tax Commissioner, described the taxes currently levied by the Crow Tribe: coal severance tax, railroad & utilities tax, rail car tax, and resort tax. The Tribe does not have a revenue-sharing agreement with the state of Montana for any of these taxes. Some business interests on the Reservation have formed a coalition to oppose the resort tax. Some businesses have paid the tax under protest; other refuse to pay the tax at all. The tribal ordinance calls for the seizure of property for failure to pay taxes. The Crow Tribe has put these businesses on notice that the Tribe intends to enforce the ordinance. Mr. Adams told the Committee that if the federal government goes through with its proposed cuts in Indian programs, the Tribe will levy more taxes to make up the revenue. It is very important that the Crow Tribe and the state enter into revenue-sharing agreements.

The second issue of importance that the Committee heard about was the 107th Meridian boundary settlement. In 1868, the eastern boundary of the Crow Reservation was set at the 107th meridian, but an inaccurate survey in 1889 resulted in a boundary line one mile to the west of the 107th meridian. The mistake was discovered in the 1950s. Attempts by the Crow Tribe to reclaim the lost land were unsuccessful, resulting in a suit being filed by the Crow Tribe in 1986. In 1994, the

U.S. Congress passed the "Crow Boundary Settlement Act" to address the disparity. In order to implement the act, the State Land Board has agreed to exchange state lands within the Reservation with Bureau of Land Management lands outside of the Reservation. The exchange is complicated by the fact that many non-Indian ranchers hold leases on the state lands, and the fear among leaseholders is that if state land is turned over to the Crow Tribe, the ranchers will lose their leases.

The Committee also heard reports about on-going litigation between the Crow Tribe and the state regarding the coal severance tax and the state-tribal gaming compact.

Other issues presented to the Committee included planning for a kidney dialysis unit and a nursing home at Crow Agency as well as a tourism initiative developed by Little Big Horn College called the Institute for Micro-Business and Tourism.

Committee to Meet on Other Reservations...Due to the success of the meeting with the Crow Tribe, the Committee hopes to hold two more meetings in Indian country this interim: one in the spring and one in the summer.

The Committee will hold its next meeting in late January or early February in Helena.

GAMING ADVISORY COUNCIL

Council to Hold Demonstration...The Gaming Advisory Council will meet on January 17 and 18 in Room 325 (Old Supreme Court Chambers) of the State Capitol. The Council is chaired by Senator Sharon Estrada.

On January 17 at 9 a.m., the Council will host a manufacturers' demonstration of automated computer accounting and monitoring systems for video gambling machines. Legislators are especially invited to attend this demonstration.

For further information about the demonstration, please contact Wilbur Rehmann at the Gambling Control Division, (406)444-1971.

COMMITTEE ON STATE MANAGEMENT SYSTEMS

Committee on State Management Systems Meets...The SJR 23 Committee on State Management Systems met in Helena on November 13 and 14. Monday's meeting was devoted to an overview of the principles of Business Process Reengineering, conducted by Resource Integration Associates, Inc., and to a demonstration of an integrated data management software product developed by Oracle, Inc. In addition to the Committee members, the meeting was attended by about 50 state agency managers who are involved in agency management or in information technology and management. The two activities served to augment the Committee's and others' knowledge and understanding of the principles and pitfalls of management information integration and to showcase technological possibilities for allowing more efficient and effective access to and development and use of management information.

The Tuesday meeting was a Committee work session at which each of the Task Forces commissioned by the Committee presented their respective work plans. The Task Forces will be conducting a survey of legislators, local government officials, and state employees to gather information on current and anticipated needs regarding access to and the development and uses of information regarding the management of the state's financial, personnel, and other assets.

Additionally, the Committee adopted the following list of goals.

- Prepare a bill for recommendation to the 55th Legislature that will generally revise and clarify the laws relating to the management of the State's personnel, financial, and other assets.
- Develop a vision of automated and integrated state asset management systems for the 21st Century.
- Develop a transition schedule to implement automated, integrated state asset management systems.
- Design a core policy group to continually and consistently:
 - (1) address issues of system transition, automation, integration, and other matters; and
 - (2) advocate for the systems, beginning with the transition and continuing through budgeting towards full implementation and operation.
- By December 1, 1996, deliver to the 55th Legislature and the Governor a report that fulfills the goals of the Committee.

Committee to Meet Again in February...The Committee is scheduled to meet next on Monday and Tuesday, February 5 and 6 in Helena. Senator Mack Cole is the Committee Chairman and Rep. Deb Kottel is the Committee Vice Chairman. For further information about the study, please contact Dave Bohyer at the Legislative Services Division, 444-3064.

LEGISLATIVE EXCHANGE MISSION

Legislative Leaders to Visit Taiwan...President of the Montana Senate Bob Brown announced November 20 that the Montana Legislative Leadership would participate in a legislative exchange mission November 23-29 to Taiwan. Some members of the delegation also are to visit Kumamoto, Japan. Montana Legislators participating in the mission are President of the Senate Bob Brown, Whitefish; Speaker of the House of Representatives John Mercer, Polson; Senate Majority Whip Tom Beck, Deer Lodge; House Majority Leader Larry Grinde, Lewistown; House Minority Leader Ray Peck, Havre; and Senate Minority Leader Mike Halligan, Missoula.

The purpose of the mission is for the legislators to gain first hand knowledge about the ongoing economic and cultural exchanges between Montana, Taiwan, and Japan.

While in Taiwan, the legislators will meet with the Taiwan Provincial Assembly, Taiwan Provincial Government Department of Finance, Environmental Protection Administration, Ministry of Foreign Affairs, Ministry of Education, China External Trade and Development Council, Taipei World Trade Center, and Biological Technique Research Institute. The Montana Legislative Leadership accepted an invitation issued by the Taipei Economic and Cultural Office in Seattle. The Taiwan Ministry of Foreign Affairs is providing airfare and accommodations for the Montana legislators.

Montana and Taiwan Province entered into a sister-state agreement in 1985. In 1988, Montana opened the state's first overseas trade office in the Taipei World Trade Center. The Montana Trade Office in Taipei is credited with opening new export markets for a variety of Montana products, including log homes, manufactured goods, processed foods, environmental services, and marketing Montana as a tourist destination.

Some Leaders Will Travel to Kumamoto...Following the Taiwan visit, Senator Brown, Senator Beck, and Representative Peck plan to spend two days in Montana's sister-state Kumamoto, Japan. Montana and Kumamoto entered into a sister-state agreement in 1982. The Montana Kumamoto relationship has grown into one of the most active US-Japan grassroots relationships. Annual educational exchange programs for teachers and students exist at the university and high school levels. Since 1985, the

Kumamoto government has assigned a staff person to work in Montana and in June 1992 established Kumamoto Plaza, a cultural center in downtown Helena. In October 1991, Montana opened a state trade office in the Kumamoto Prefectural Office Building. The vitality of the sister state has been an ongoing people-to-people exchange. Cultural understanding and close friendships have been fostered by a diverse number of exchanges which have included music, sports, disabled persons, business, performing and visual arts, and traditional festivals.

SUBCOMMITTEE ON FOREIGN INVESTMENT DEPOSITORY

Subcommittee Meets in Missoula...The Subcommittee on Foreign Investment Depository held its third meeting on October 27 in the Pope Room at the University of Montana Law School in Missoula. The environment provided an atmosphere conducive to lively, informal presentations and discussion. Lunch was graciously supplied by President Dennison's office.

The main focus of this meeting was privacy. How much and what kinds of confidentiality could a state-chartered financial institution offer to foreign depositors? To what degree is state action in the field of financial privacy preempted by federal law? Does Montana enjoy any "wiggle room" that would enable the establishment of a financial institution offering a unique or at least comparatively advantageous degree of privacy to foreign depositors? These were some of the general questions addressed at the meeting.

The Subcommittee heard comments on these and more specific questions from Law School professors Larry Elison and Rob Natelson and from Bruce MacKenzie from the law firm of Dorsey & Whitney. Staff attorney David Niss also weighed in on the conversation regarding the interplay of federal banking laws, common law principles, existing Montana statutes, and the provision in the state constitution (Article II, Section 10) that guarantees the right of privacy. The results of this dialogue are not definitive, by any means, as there is not a lot of case law to supply guidance in this arena, but in general terms the following seems to be true:

- Federal laws requiring the reporting of currency transactions apply to nearly every conceivable financial institution and preempt state action that would effectively circumvent these laws.

- The U.S. Supreme Court has found that individuals who engage with banks should not expect their financial records to be kept confidential vis-a-vis federal government inquiries.
- Banks and private financial institutions routinely adopt internal policies regarding customer confidentiality, but a normal banking relationship is no guarantee that financial information will not be released to other businesses and private individuals as well as state agencies.
- The Montana Constitution and common law provide a basis for as yet unwritten statutes that could heighten the degree of privacy the Depository could offer to foreign depositors. Such statutes would not supersede federal laws.

Is this still tenuous level of confidentiality sufficient to attract foreign depositors? In and of itself, probably not; however, the combination of relative privacy with the extraordinary security afforded to depositors by virtue of the political stability of the United States and a number of other special features of the Depository might. One of these other features could be the marriage of liquid capital and a solid, appreciating asset such as platinum bars. The "platinum connection" was discussed briefly at the October meeting and will be further developed at the December meeting.

Subcommittee Discusses Possibility of Tribal-Chartered Bank... Professor Ray Cross from the UM Law School was on hand to ask as well as answer several questions concerning the possibility that a tribal government in Montana may want to charter a foreign funds depository under its own authority and jurisdiction. Discussion of this "tribal option" revealed that the plenary power of Congress over Indian nations results in less autonomy for tribes than states enjoy in the banking arena. A recent proposal to the Oglala Sioux Tribe in South Dakota from someone purporting to represent Saudi royalty proved to be an elaborate fraud. The proposal was rejected by the Tribal government, but similar scams are likely to be attempted again in Indian Country, perhaps in Montana. This example of skulduggery also revealed, however, another potential specialization for the Depository--the structuring of financial relationships that conform to basic precepts of Islam. Since a number of potential clients are likely to be Muslims from the Middle East and Asian countries, such as Indonesia (the most populous Muslim country in the world), and because interest is considered usury under Islamic law, the absence of interest earnings on invested capital might enable the Depository to capture deposits that more conventional banking operations cannot.

Subcommittee Looks at Regional and Transnational Issues... Other invited participants helped the Subcommittee fit the prospective Depository

into a regional and transnational context. Dr. Phil West from the Mansfield Center talked about the dynamism of the Asia-Pacific market and the real possibility of connecting offshore investors with a Montana Depository. He commended the Subcommittee for taking an entrepreneurial approach to changes in the global political economy. Mr. Ron Klaphake represented both the Missoula Economic Development Corporation and the Pacific Northwest Economic Region (PNWER), a private-public partnership between five U.S. states (including Montana) and the two westernmost provinces of Canada, Alberta and British Columbia. Foreign trade and investment are vital to the health of this region. (If PNWER were a separate country, it would rank in the top 10 economic powers in the world, as measured by GDP.) Klaphake also noted the similarities between Montana and Switzerland and suggested that the Subcommittee take a closer look at the cultural as well as environmental factors that have favored the Swiss in banking and other economic specializations.

Professor Michael Laslovich described the political situation in Canada leading up to the October 30 referendum in Quebec [which resulted in a narrow, one percent margin of victory for the citizens of that province who are opposed to secession] and acknowledged that anxiety and uncertainty might well stimulate the movement of financial capital south of the 49th parallel in the months and years to come. Professor Tim Manual from the UM Business School also observed that while the Depository might prove a hard sell at the outset, given all the legal complications, Montana's relative isolation, and offshore competition, it might grow rapidly once established as a legitimate institution.

To Meet Next in Helena...The next (fourth) meeting will take place on December 1 in Room 437 of the State Capitol in Helena. The central focus will be on the types and volume of revenue the state could reasonably expect to collect from the privately-run Depository via licensing fees, corporate taxes, and other charges. While the Subcommittee members have learned that the volume of liquid capital is enormous, involving hundreds of billions of dollars and other currencies, the market for private or "offshore" banking is also highly competitive. What used to be almost the exclusive domain of Swiss and Caribbean banks has dispersed to a growing number of alternative jurisdictions in Asia and Europe. The cluster of knotty questions surrounding the main one--Why Montana?--presents an ongoing challenge.

Other agenda items for the December meeting include: a second look at the privacy dimension; a brief assessment of private deposit insurance (and how the state regulates "surplus lines" insurers); a summary of several of the economic development aspects of the depository, especially in the areas of tourism, technological innovation, and teaching and training programs; and a preview of the next meeting, scheduled for January 25-26 at the First Interstate Bank in Billings. It is at this fifth meeting that the Subcommittee expects to hear directly from potential clients of the

Depository, such as the agents of wealthy offshore investors, as well as from large, transnational banks, international consulting firms, prominent academic experts, and federal regulatory agencies such as the Federal Reserve system, the Internal Revenue Service, and the Financial Crimes Enforcement Network.

The minutes from the October 27 meeting, as well as from previous meetings, are available on request from the Legislative Services Division. For further information about the Subcommittee on the Foreign Investment Depository, contact Stephen Maly at the Legislative Services Division, 444-3064.

LEGISLATIVE FINANCE COMMITTEE

Committee to Meet on December 8...The Legislative Finance Committee (LFC) will meet on December 8 at 8:30 a.m. in Room 312-2 of the State Capitol. The tentative agenda includes the following:

- Dept. of Public Health & Human Services proposed reorganization structure;
- Mental Health Managed Care;
- update on potential impacts of federal budget reductions;
- biennial comparisons: issues and methodology;
- review of services provided by the Legislative Services Division;
- Retirement Incentive Program impacts;
- status of HB 171 income tax refunds;
- status of personal property tax refunds;
- update on executive branch initiatives re: privatization;
- SJR 23 Task Force update; and
- budget amendments summary report.

SUBCOMMITTEE ON DEDICATED REVENUE AND STATUTORY APPROPRIATIONS

SB 378 Subcommittee to Meet...Representative Zook has scheduled a meeting of the Subcommittee on Dedicated Revenue and Statutory Appropriations for December 7 at 2 p.m. in Room 108 of the Capitol.

An informational report will be presented to the Subcommittee containing background information on state special revenues and statutory appropriations. The report also contains a proposed plan of action for the Subcommittee's consideration. This material will be the basis for the discussion at the December meeting and will provide the Subcommittee with a better understanding of the magnitude of state special revenue in the state compared to other revenue and the role and use of statutory appropriations.

Action taken by the Department of Administration on state special revenue accounts eliminated due to last interim's review and due to Senate Bill 83 will be presented, including fund balances deposited in the general fund from eliminated accounts. Historical information on total state revenue and state special revenue will be presented to enable the Subcommittee to see the relative magnitude of dedicated revenue provisions. The Subcommittee will review the DofA survey form for state special revenue accounts to discuss the information to be requested.

Historical information on statutory appropriations will be presented and statutes of current statutory appropriations handed out. Discussion of statutory appropriations will center on ways to classify them (such as by revenue source, use, and fund type) and other information that the Subcommittee will need to facilitate its review.

Statutes note a number of "legislative findings" in addition to assigning duties to the LFC. After the presentation of historical data on state special revenues and statutory appropriations, the Subcommittee will be better prepared to determine if the "findings" and duties are still applicable or if statutes need to be changed to reflect current conditions.

ENVIRONMENTAL QUALITY COUNCIL

EQC and Subcommittees To Meet in December...The following meetings of the Environmental Quality Council and its subcommittees have been scheduled for the first week of December:

- House Bill No. 412 Environmental Self Audit interested and affected Parties meeting scheduled for December 1 from 9 a.m. to 11 a.m. in Room 104 of the State Capitol.

Meeting Summary: As a part of its HJR 10 Enforcement and Compliance Study, the EQC will be studying the environmental self audit issues that were raised in House Bill 412 during the 1995 legislative session. The purpose of this meeting is to discuss how the EQC should proceed in studying these issues.

- Enforcement and Compliance Subcommittee meeting scheduled December 6 and the morning of the 7th in Room 104 of the State Capitol.

Meeting Summary: On December 6, the Subcommittee will hear presentations on the status of compliance and enforcement programs within the Department of Natural Resources and Conservation (DNRC). The DNRC programs include: the Oil and Gas Conservation Division, the Water Resources Division, the Conservation and Resource Development Division, and the Forestry Division. On December 7, from 8:30 a.m. to 12:00 p.m. the Subcommittee will reconvene and hear responses from the regulated community and public interest organizations on the enforcement and compliance processes of the Hardrock, Coal, and Open Cut Programs of the Department of Environmental Quality (DEQ).

- MEPA Subcommittee meeting scheduled for the morning of December 7 from 9 a.m. to 12 p.m. in Room 437 of the State Capitol.

Meeting Summary: The MEPA Subcommittee will hear updates on: state agency inclusion of private property right considerations into the Montana Environmental Policy Act; DEQ reorganization and MEPA implementation; EQC MEPA implementation training; and criteria for the George Darrow MEPA award.

- Council meeting scheduled December 7 and 8 at the Helena College of Technology on the afternoon of the 7 (1 p.m. to 4:30 p.m.) and in Room 104 of the State Capitol on the 8 (8:30 a.m. to 4 p.m.).

Meeting Summary: On December 7, at the Helena College of Technology, the Council will be participating in a satellite video teleconference panel discussion on environmental risk assessment and prioritization. On December 8, the Council will hear updates from the Montana Environmental Policy Act Implementation Subcommittee and the HJR10 Enforcement and Compliance Subcommittee. The Council will also receive updates on the Fish, Wildlife, and Parks water leasing program, the House Bill 472 instream flow process, and the natural resource agency reorganization process.

For more information on these issues, please contact the EQC staff at 444-3742.

REVENUE OVERSIGHT COMMITTEE

Coal Severance Tax Litigation Drags On...The Revenue Oversight Committee met November 17 in Helena. Clay Smith, Solicitor, Montana Department of Justice, reported on the latest round of litigation related to the Crow Indian Tribe lawsuit for refund of coal severance taxes and coal gross proceeds taxes. The lawsuit has a long and complicated history dating back to 1978 when the Crow Tribe filed for a declaration that Montana's coal severance tax and coal gross proceeds taxes were preempted by federal law for coal produced on the Crow Indian Reservation as well as on the Ceded Strip. The Ceded Strip, originally part of the Reservation, was opened to homesteading by an act of Congress in the first decade of this century. The mineral rights, however, remained with the Tribe. In January 1983, the U.S. District Court in Billings required that coal severance taxes imposed on Westmoreland, Inc., for coal produced on the Ceded Strip be deposited in an escrow account until the lawsuit was settled. In 1987, the court provided the same relief with respect to coal gross proceeds taxes. Also in that year, the Ninth Circuit Court of Appeals held that Montana's coal taxes imposed against coal production on the Ceded Strip were invalid. As a result, severance tax payments of about \$23.4 million and coal gross proceeds tax payments of a little over half a million, plus accumulated interest, were turned over to the Tribe from the escrow accounts.

However, the tribe is still seeking restitution for severance taxes paid between 1975 and 1982 and for coal gross proceeds taxes paid to Big Horn County between 1975 and 1987. In addition, the Tribe is seeking damages for economic loss associated with the cancellation of a lease agreement with Shell Oil that the Tribe claims was caused by the imposition of coal taxes.

Mr. Smith informed the Committee that in November 1994, Judge Jack Shanstrom dismissed the Tribe's claim for retroactive relief for coal taxes paid by Westmoreland and for damages associated with cancellation of the lease with Shell Oil. The Crow Tribe has appealed Judge Shanstrom's decision to the Ninth Circuit Court. Mr. Smith also described the fiscal impact related to the principal amount of taxes in dispute plus prejudgment interest. As of March 31, 1994, the total amount that could be refunded to the Tribe for the coal severance tax would be \$264 million and for the coal gross proceeds tax would be \$52.8 million.

Changes to Montana's Property Classification System Summarized...Jeff Martin, Committee staff, in an informal report, presented a summary of legislative changes to Montana's property classification system since 1977. In 1977, the Montana Legislature ended the century-old practice of fractional assessment by requiring that most taxable property be assessed at 100% of market value and taxed at rates established by the

Legislature. To ensure that the effective tax rates of most property remained the same, the Legislature increased the number of property classes from nine to eighteen. Two additional classes of property were created by separate legislation. Based on recommendations of the Revenue Oversight Committee, the 1979 Legislature generally revised the property classification system. It reduced from twenty to ten the number of property classes. The Legislature also created a single property class for certain centrally assessed property.

Between 1979 and 1987, the Legislature gradually increased the number of property classes to twenty. Most of the new classes of property were created to respond to problems arising from the reappraisal of real property, to provide more equitable treatment of certain personal property, or to address legal considerations. For example, in 1985, the Legislature created a separate class for farmsteads (taxed at 80% of the tax rate applied to residential and commercial real property) because of concern that increased land values of nearby suburban areas would adversely impact residential property on farms and ranches. The Legislature also created a separate class for railroad and airline property because of federal law that restricted how this property could be taxed with respect to other business property.

During the June 1989 Special Session, in a bill designed to attract a canola processing facility to Montana, the Legislature also reduced to a single rate (9%) the property tax rate on certain personal property by combining class nine, class ten, and class sixteen property into class eight. The tax rates of the combined property ranged from 11% to 16%. Under SB 417 (1995), the 9% rate will decline to 6% by 1998. Since 1991, the Legislature has eliminated six other classes of property by combining them with other classes. Montana now has 11 classes of property. These changes have made a complex property tax system more comprehensible.

County Property Taxes in Montana... Stan Nicholson, Director, Montana Fiscal Forums, presented graphic representations of changes in the property tax base and taxes levied for Montana as well as for selected counties. According to Nicholson's report, mineral production (primarily coal, oil, and natural gas) accounted for 22% of the state's property tax base in 1987. During the June 1989 Special Session, the Legislature eliminated most mineral production from the property tax base in the bill that revised the way in which public schools are financed (HB 28). Although mineral production still provides tax payments to local jurisdictions in the form of "nonlevy" revenue, the statewide property tax base has shifted to other types of property. For example, between 1987 and 1994, mineral production fell from 22% of the tax base to 4%, while residential property increased from about 24% to over 34%. The proportion of the tax base of other types of property also increased but not to the extent of residential property. The larger increase in residential property is due, in part, to reappraisal. Between 1989 and

1995, property taxes levied increased statewide by \$177 million, with property taxes for education accounting for over three-fourths of the increase. Changes in the property tax base and property taxes vary, obviously, from county to county. In Rosebud County, for example, the tax base shifted dramatically from coal production to utility and railroad property between 1987 and 1994. On the other hand, the tax base in Silver Bow County increased by 42% between 1987 and 1994, but the composition of the base has not changed that much.

Tax Policy Task Force Update...Senators Mike Foster and Spook Stang reported on the second meeting of the Montana Tax Policy Task Force held October 13 and 14 in Helena. The Task Force was created by SB 417 to study all aspects of taxation in Montana. Based on a National Conference of State Legislatures publication, the Task Force adopted criteria for establishing a high-quality tax policy. These criteria include the adequacy and stability of revenue, tax equity, economic efficiency, and simplicity and accountability. At this point in its study, the Task Force is primarily concerned with property tax issues and appointed a subcommittee to revisit the provisions of SB 421, a bill considered, but rejected, by the 1995 Legislature. The bill would have imposed limits on property tax increases. The Task Force also formed two other subcommittees. One subcommittee will refine the criteria related to a high-quality tax system, while the other will explore local option taxes. All three subcommittees will meet in December. The full Task Force will meet January 12 and 13, 1996. Because the Legislature provided only \$15,000, the Task Force will solicit outside contributions for future meetings.

NCSL Property Tax Seminar...The National Conference of State Legislatures sponsored a one-day property tax seminar in Atlanta, Georgia on October 19. Jeff Martin, who attended the seminar, presented a brief synopsis of the seminar topics. He focused his comments on "The Property Tax in the 21st Century", presented by Hal Hovey, President, State Policy Research, Inc., and John Shannon, Senior Fellow, The Urban Institute. According to Hovey, relieving property tax burdens is one of the most popular ideas in state fiscal policy. Following Michigan's widely publicized property tax relief, many states are studying the concept of eliminating, or at least reducing, major portions of residential property taxes or school property taxes. Although the property tax is the least popular of all state and local taxes, Hovey and Shannon do not believe there will be a wave of property tax reform sweeping the nation. Reliance on the property tax will continue based on good public administration, good economics, and good tax policy. Hovey stressed that all taxes, when considered independent of spending, are bad. Taxes take money out of the hands of consumers and businesses and distort economic decisions. As such, the property tax is neither better or worse than other taxes. Many states have hybrid systems that utilize the

advantages of one or more taxes to offset the disadvantages of other taxes.

Hovey also analyzed which states may be likely candidates for property tax reform. In that analysis, he eliminated states that already have low property tax burdens (e.g., Mississippi and New Mexico), states that have already dealt with high property taxes (e.g., Michigan, Connecticut, and Kansas), states that have extraordinarily high and low tax burdens (e.g., New York and Wyoming), and states that have a missing tax (e.g., Montana and Texas). Based on this process of elimination, only 23 states would be candidates for reducing property taxes. However, several of these states are in such poor fiscal condition (e.g., Vermont) that the reduction of any tax is questionable, while other states are committed to reducing other taxes (e.g., Arizona and New Jersey). Thus, the short list is down to just six states: Maine, Wisconsin, Nebraska, Iowa, Illinois, and Minnesota. Whether property tax reform occurs in these states will depend on each state's particular circumstance.

Other seminar topics included the future of property taxes in funding public education, developing public understanding and support for tax reform, winners and losers associated with tax reform, and recent legislative property tax reform experiences.

Committee Sets Priorities...The Revenue Oversight Committee had previously decided to undertake a fairly comprehensive analysis of the state's property tax structure. However, based on discussions of property tax issues earlier in the day, especially the Tax Policy Task Force update, the Committee decided to limit its focus to certain specific issues. These issues include the rail car tax, the motor vehicle tax, the taxation of ski resort property located on federal land, and the relative importance of nonlevy revenue in local tax bases. The Committee will also review the impact of mistakes in the appraisal of certain property and will monitor initiative petitions designed to revamp the property tax. Staff expressed a commitment to complete the elements contained in the property tax proposal presented to the Committee at the June 16 meeting.

Department of Revenue Reports...Mick Robinson, Director, Department of Revenue, reported on the status of litigation related to the rail car tax and provided an update on the income tax refund and partial property tax reimbursement. Randy Wilke, Bureau Chief, Property Assessment Division, gave a progress report on the reappraisal of residential and commercial real property and on the reappraisal of agricultural and forest lands. Mick Robinson also reported on negotiations with the Blackfeet Tribe related to the dual taxation of oil and natural gas production.

Committee to Meet in February...The Revenue Oversight Committee will meet next on February 2, 1996, in Helena.

THE BACK PAGE

In June of 1989, the Montana Legislature in Special Session created the interim Committee on Educational Accountability and Quality. The Committee's mission was to review four educational reforms to determine if any or all of them would be worthwhile implementing in Montana. The four reforms were: school choice, teacher incentives, alternative certification, and report cards for schools. The idea for the study came from Governor Stan Stephens as part of his "New Century Plan for Accountability and Quality in Education". When Governor Stephens chose not to pursue legislation implementing the reforms, the Committee concluded its study with no recommendations.

This past summer, Governor Marc Racicot asked Bob Robinson, former director of the Department of Health and Environmental Sciences, to develop a background paper on school choice for the Governor's use in deciding whether to propose school choice legislation to the 1997 Legislature.

This month's "The Back Page" article looks at the issue of school choice and its various manifestations.

TO CHOOSE OR NOT TO CHOOSE: THAT IS THE QUESTION

by Connie Erickson, Research Analyst
Legislative Services Division

INTRODUCTION

The publication in 1983 of A Nation at Risk, which warned of a mediocrity engulfing America's schools, put education reform on the national agenda and on the agenda of every single state in the country. Within three years of its publication, almost every state had enacted reforms dealing with increased high school graduation requirements, statewide testing of students, increased teacher education requirements, and increased teachers' salaries. But when these regulatory reforms failed to produce the desired results, reformers looked to ways to "restructure" the traditional public school system through changes in curriculum, school governance, and the roles of teachers and administrators. One of the structural reforms put forth was that of "school choice."

WHAT IS SCHOOL CHOICE?

Simply put, school choice is the ability of parents to select an education approach -- as embodied by a particular teacher, program, or school district -- that is consistent with their needs and interests and those of their children. There are basically three types of school choice: intradistrict, interdistrict, and private. Intradistrict choice refers to options available to students within a single district. These options can include electives within a curriculum, open enrollment among all of the schools in the district, or a magnet school. (A magnet school is a school organized around an academic specialty, e.g. the arts; a teaching philosophy, e.g. Montessori; or a theme, e.g. the environment.)

Interdistrict choice allows students to cross district boundaries to attend school in a district other than the district of residence. Early interdistrict choice programs were developed in response to court-ordered desegregation and involved urban and suburban districts. The form of interdistrict choice receiving the most attention today is statewide choice which allows a student to choose a public school anywhere in the state under certain conditions: the willingness of the nonresident district to accept the transfer and the maintenance of a racial balance within the school.

Private school choice is the most controversial form of choice. Private school choice allows a student to attend a private school at public expense. A private school choice program may or may not include religious schools. State funding for a private school choice program generally takes one of two forms: vouchers or tax credits. A voucher is a certificate for a designated dollar amount per student to be redeemed at the private school of the parent's choice. A tax credit is a credit against income or property taxes for money spent on expenses associated with sending a child to a private school.

WHERE HAS SCHOOL CHOICE BEEN TRIED?

One of the first experimentations with choice occurred in the Alum Rock Union School District in San Jose, California in the early 1970s. Parents were given vouchers that they used to select any school within the district. The program lasted for about five years and produced mixed results. At about the same time as the Alum Rock program was ending, the East Harlem Community District No. 4 in New York City was creating a controlled choice program in its junior high schools. All of the junior highs in East Harlem were recreated with a distinctive academic focus or teaching philosophy. All sixth grade students entering junior high in East Harlem must choose a junior high school. The program has proven very successful and continues to flourish. Today, intradistrict choice programs can be found in almost 20 states.

The first state to implement a statewide school choice program was Minnesota. Adopted by the state legislature in 1987, the program allows students in grades K-12 to choose any public school or program located in a district other than the one in which the student resides. Since the advent of the Minnesota program, 12 other states have implemented some form of interdistrict choice.

IS PRIVATE SCHOOL CHOICE ALLOWED ANYWHERE?

Where choice has been confined to public schools, there has been opposition but there has not been the controversy that has surrounded the Milwaukee Parental Choice Program. Created by the Wisconsin Legislature in 1989, the program allows a limited number of low-income students from the Milwaukee Public Schools to attend private, nonsectarian schools within the city of Milwaukee. The state pays the private school an amount equal to the per pupil student aid the state provides to the Milwaukee Public Schools, regardless of the tuition charged at the private school; the state allocation to the Milwaukee Public Schools is then reduced by the same amount. The private school may not charge any further tuition to the students. The participating private schools may not discriminate on the basis of race, religion, gender, prior achievement, or prior behavioral records.

Originally, the program was limited to private, nonsectarian schools with no religious affiliation or training. Almost from the beginning of the program, however, there was discussion of extending it to religious schools. In June of this year, the Wisconsin Legislature, at the urging of Governor Tommy Thompson, adopted a budget that included approval of state-funded tuition vouchers for children who attend religious schools. The American Civil Liberties Union, with the support of teachers' unions and other groups, has filed suit against the state of Wisconsin arguing that the law violates the separation of church and state required by both the state and federal constitutions. The program has been temporarily halted while the suit is being pursued. Supporters of religious school vouchers maintain that a recent U.S. Supreme Court ruling upholding public funding of a Christian magazine at a state university (*Rosenberger v. Rector and Visitors of University of Virginia*, Case No. 94-329) bodes well for religious school voucher programs.

Wisconsin is not the only state to confront the issue of religious school choice head-on; a religious school voucher program was also recently approved by the Ohio Legislature for the Cleveland school district. It too is being challenged in the courts. In Iowa and Minnesota, parents of children who attend private schools are allowed to take a tax deduction. Governor Fife Symington of Arizona recently announced some sweeping proposals for reforming Arizona public schools, including private school

vouchers. Governor Christine Todd Whitman of New Jersey was recently rebuffed in her attempts to implement religious school vouchers in her state as was Governor Tom Ridge of Pennsylvania. However, Governor Ridge is considering whether to again pursue tuition grants for private and religious school students.

WHERE DO CHARTER SCHOOLS FIT INTO SCHOOL CHOICE?

In an attempt to find some middle ground between traditional public education and vouchers for private education, school choice proponents are promoting the concept of charter schools. A charter school is a public school operated under a charter or a contract with a school district, a state education agency, or other public institution, such as a college or university, and that is largely free of state and district oversight in areas such as curriculum, instruction, budget, and personnel. However, a charter school must comply with health, safety, and civil rights regulations. A charter school can be initiated by teachers or other interested groups such as colleges, cultural institutions, or parents. Because it is a school of choice, a charter school offers innovative instructional methods and programs, such as multiage grouping or thematic instruction. Many charter schools are designed to serve specific student populations such as at-risk students or students who have dropped out of the traditional public school. A charter school operates under the dictum of "perform or perish". Specific student performance standards are written into the charter; these standards must be met in order for the charter school to continue to operate.

Because a charter school is state-funded, it must be nonsectarian, nondiscriminatory, and tuition free. A state may devise its own funding scheme, but the most common funding mechanism is to allow the per-pupil funding to follow the student to the charter school.

There are currently 12 states that have enacted charter school legislation: Arizona, California, Colorado, Georgia, Hawaii, Kansas, Massachusetts, Michigan, Minnesota, Missouri, New Mexico, and Wisconsin. However, the states vary in the degree of autonomy they grant to the charter schools. The areas where the greatest differences arise are:

- Should private schools be allowed to organize as a publically-funded charter school?
- Should a local school board be the only entity allowed to sponsor a charter school?
- Should charter schools be independent or remain part of a school district?

- Should charter school teachers be required to be certified?
- Should district-level collective bargaining provisions be maintained in a charter school?

Proponents of charter schools argue that the greater the legal and fiscal autonomy and freedom from regulation, the stronger and more effective the charter schools will be. Opponents caution that too much autonomy could lead to the privatization of public education.

WHAT ABOUT SCHOOL CHOICE IN MONTANA?

Currently, in Montana a parent may enroll a child in a school outside of the child's school district of residence, subject to the discretionary approval of the trustees of the district of residence and the district of choice. If approval is granted, the parent may be charged tuition and transportation costs, although the district of choice may waive all or part of the tuition. A parent may also choose to send a child to school in another district with that district's approval, if the parent agrees to pay the tuition. Many large school districts in Montana allow parents to choose a school other than their neighborhood school, subject to the approval of the local school board.

During the 1993 Special Session of the Legislature, Rep. William Boharski introduced House Bill No. 81 that would have allowed an individual income tax credit for certain qualified education expenses, including expenses for attendance at a private school or a home school. Proponents touted the bill as an important first step in the direction of full school choice. Opponents to HB 81 argued that the income tax credit was unconstitutional because it would indirectly provide state aid to sectarian schools. The bill failed Second Reading in the House.

In 1995, Sen. Daryl Toews introduced legislation, at the request of the Montana School Boards Association, that would have allowed the establishment of charter schools. Opposition to the bill centered on the lack of involvement by teachers in the chartering process and the ability of local trustees to abrogate collective bargaining agreements. Although the bill was amended to address the concerns, SB 370 was eventually tabled in the House Education Committee.

Montana's school accreditation standards allow a local board of trustees to obtain "permission to use an alternative to any standard, section of standards, or the entire set of standards, excluding standards that pertain to law or certification requirements". This alternative standard rule was amended this past summer to allow a school or district to seek approval for a performance based accreditation process. If approved, a school

district could set up a charter school similar to the charter school envisioned in SB 370. It remains to be seen if the amended alternative standard rule will be used by school districts to establish charter schools.

WHAT IS THE FUTURE OF SCHOOL CHOICE?

What will the future bring in terms of school choice? Will it become a proven educational reform or is it merely a guise under which private schools can receive public funding? Will school choice experiments in other states show compelling results or offer valuable insights? Whatever it may be, school choice has attracted a lot of legislative attention in recent years. Since 1990, the number of states that have passed statewide choice legislation has increased from five to 13. In 1993 alone, 34 state legislatures considered some form of choice legislation. Two states, Wisconsin and Ohio, have expanded school choice to include private religious schools. Charter schools are now available in 12 states. The "Improving America's Schools Act", passed by the U.S. Congress, contains a federal grant program to support the design and implementation of charter schools.

However, the gains made by school choice advocates have not come easily. Oftentimes, passage of the legislation required several attempts and, in some instances, much compromise. When final passage did come, in many instances the legislation was met with a court challenge. And in some states, attempts to legislate some form of school choice have met with stiff opposition, resulting in failure. But despite these obstacles, school choice remains a viable option in the education reform debate. In fact, it may become not so much a question of whether or not to choose, but what to choose.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

DECEMBER

December 1, Subcommittee on Foreign Investment Depository, Room 437

December 1, EQC Subcommittee on Environmental Self-Audit Interested and Affected Parties (HB 412), Room 104, 9 a.m.

December 6 and 7, EQC Subcommittee on Enforcement and Compliance (HJR 10), Room 104

December 7, EQC Subcommittee on MEPA, Room 437, 9 a.m.

December 7, Environmental Quality Council, Helena College of Technology, 1 p.m.

December 7, Juvenile Justice and Mental Health Study Commission, Youth Services Center, Billings, 12 Noon

Lincoln Center, Billings, 7 p.m.

December 7, LFC Subcommittee on Dedicated Revenue and Statutory Appropriations, Room 108, 2 p.m.

December 8, Legislative Finance Committee, Room 312-2, 8:30 a.m.

December 8, Juvenile Justice and Mental Health Study Commission, Youth Services Center, Billings, 8 a.m.

December 8, Environmental Quality Council, Room 104, 8:30 a.m.

December 14, Subcommittee on Veterans' Needs, Room 104, 9:30 a.m.

December 14, Legislative Council Subcommittee on Personnel Issues,
telephone conference call

December 15, Legislative Audit Committee, Room 104

December 25, Christmas, holiday

JANUARY 1996

January 1, New Year's Day, holiday

January 15, Martin Luther King, Jr. Day, holiday

January 17 and 18, Gaming Advisory Council, Room 325

January 22, Postsecondary Education and Policy Budget Committee,
Room 104, 10 a.m.

January 25 and 26, Oversight Committee on Children and Families

January 25 and 26, Subcommittee on Foreign Investment Depository,
Billings, First Interstate Bank

January 26, Legislative Council

FEBRUARY

February 2, Revenue Oversight Committee

February 5 and 6, Committee on State Management Systems

February 5 and 6, Juvenile Justice and Mental Health Study
Commission

February 23, Committee on Public Employee Retirement Systems

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